88-638

No.

Supreme Court, U.S.
FILED
OCT 14 1988
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

BILLY JOE LAFFERTY,
Petitioner,

vs.

CITY OF COOTER, RICK COOPER, STEVE CHILDERS and JUNE KEEN, in Their Official and Individual Capacities As Aldermen,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JIM R. BRUCE
(*Counsel of Record*)
P.O. Box 37
Kennett, Missouri 63857
Telephone: (314) 888-9696
Attorney for Petitioner

October, 1988

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

QUESTIONS PRESENTED FOR REVIEW

1.) May a city delegate to a narrow group of landowners the absolute and unreviewable power to determine who may or may not be granted a municipal liquor license?

2.) Is Ordinance 1754(13)(A) within the scope of the police powers of the State of Missouri as declared by its Supreme Court and the Missouri Zoning Enabling Act, Chapt. 89, R.S.Mo.?

3.) May enforcement of Ordinance 1754(13)(A) lead to arbitrary and capricious results?

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OPINIONS BELOW

The Eighth Circuit Court of Appeals affirmed without opinion. Its order is contained in the Appendix.

The opinion of the District Court is unreported and included in the Appendix.

JURISDICTIONAL STATEMENT

This petition for writ of certiorari is for review of the judgment of the United States Court of Appeals for the Eighth Circuit entered on April 13, 1988.

The Court of Appeals entered its order denying rehearing and rehearing *en banc* on June 13, 1988. On September 13, 1988 this Court entered its order extending the time for filing a petition for writ of certiorari until October 14, 1988.

Jurisdiction of the Supreme Court is conferred by Title 28, Section 1254(1) of the United States Code.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions involved in this case are:

"*Fourteenth Amendment, Section 1, U.S. Constitution.* All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state de-

prive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

The municipal ordinance involved is ORDINANCE NO. 1754, Section 13(A) which provides:

"Further, no license shall be issued for the sale of intoxicating liquor within a residential district unless applicant shall have presented a petition to the City Council (along with all other applicable forms relating to such application) which petition shall include the signatures of at least 75% of owners of real property located within a radius of 600 feet of the proposed location, consenting therein to the establishment of such a place of business and to the granting of a license therefor. The 600 feet of restriction set out herein shall be measured from that portion of the licensee's building nearest to the area of the radius of 600 feet in every direction."

The statutes involved in this case and reproduced in the Appendix are:

Revised Statutes of Missouri, §§89.010-89.110

STATEMENT OF THE CASE

At issue is the validity of a city ordinance which delegates to private property owners the power to determine who may be licensed to sell alcoholic beverages and who may not.

In May 1985, petitioner leased a commercial building in the City of Cooter for the purpose of selling alcoholic beverages. He subsequently applied for an available municipal liquor license giving that building as his proposed business location. The building was located on Main Street in the main business area of the city and immediately adjacent to a package liquor store licensed to sell intoxicating liquor. The city made an investigation of petitioner's background and received a favorable report. Thereafter, the mayor informed petitioner that the city found no reason to refuse him a license, except for the provision of Section 13(A) of the city liquor licensing ordinance. That section prohibited the issuance of a liquor license "within a residential district" without the approval of 75% of the property owners within 600 feet of the proposed location for the license. The mayor further stated that plaintiff would be required to obtain the written consents before a license could be issued. Respondents subsequently denied the application for a license for the reason that petitioner had failed to comply with the consent provision of the ordinance.

Respondents have admitted that a liquor license was available and that plaintiff was entitled to a license upon obtaining the necessary consents. They further admit that the city has not enacted any zoning ordinances or regulations or made any comprehensive plan for regulating the

use of property as provided by Missouri's Zoning Enabling Act, §89.010 *et seq.* R.S.Mo. Likewise, the city admits that following the adaption of Section 13(A), the mayor discussed the ordinance with the owners of the package liquor store and agreed that the consent provisions of the ordinance would not be enforced to require him to obtain the consents for the issuance of future licenses since he had operated a package store at the time the new ordinance was passed. But for that agreement, the package store owner would have been required to obtain consents from virtually the same property owners within the 26 surrounding acres required of petitioner.

Plaintiff filed suit pursuant to 42 U.S.C. §1983 in the United States District Court for the Eastern District of Missouri, Southeastern Division on August 19, 1985 alleging that the ordinance was arbitrary and illegal and violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States. Jurisdiction was invoked pursuant to 28 U.S.C. §1331 and §1343(3) and (4). The district court on cross motions for summary judgment dismissed and petitioner filed notice of appeal. The Eighth Circuit Court of Appeals dismissed the appeal prior to receiving the record on appeal or the time for filing Appellant's brief. On petition for rehearing and rehearing *en banc* the court vacated its previous order and reinstated the case. After the filing of brief and oral argument the court dismissed without opinion. Petitioner again sought rehearing and rehearing *en banc* which was denied on June 13, 1988.

REASONS FOR GRANTING THE WRIT

Section 13(A) of the City Ordinance restricts the ownership and use of real property by conferring on a narrow group of private property owners the power to determine who may or may not be granted a municipal license. The enforcement of the ordinance presents an important federal question which may affect numerous municipalities in virtually every state. Integrally related to the Due Process and Equal Protection analysis is the invalidity of the ordinance under Missouri law as reflected in state legislative enactments and judicial decisions of the Missouri Supreme Court.

I.

The Ordinance Unlawfully Delegates to a Narrow Group of Private Landowners the Standardless and Absolute Power to Decide Who May or May Not Receive a License.

In *Eubank v. Richmond,* 226 U.S. 137, 57 L.Ed. 156, 33 S.Ct. 76 (1912), the Court invalidated a city ordinance that empowered two-thirds of the owners of property on any street to establish within a specified range, a building set-back line for that street for constructing new buildings. The ordinance was challenged on Due Process and Equal Protection grounds. The question before the Court was whether the ordinance constituted a valid exercise of the state's police power. Initially, the Court noted that the ordinance had been passed under a broad Virginia statute granting cities the authority to regulate construction of buildings, set-back lines and land use. Nevertheless, the Court held the ordinance as unreason-

able and in violation of the Due Process Clause because it subjected the rights of some to the virtual will of others without prescribing any standard or rule for the exercise of that power. In such a case, it was said the property holders might act "solely for their own interests or even capriciously."

Sixteen years later in *State of Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 73 L.Ed. 210, 49 S.Ct. 50 (1928), the Court again considered the delegation of governmental power. There a municipal zoning ordinance excluded homes for the elderly from a single family residential district except upon the written consent of two-thirds of the property owners within 400 feet of the proposed building. The Plaintiff, a trustee of a home for the elderly, had applied for a license to construct a home for the aged poor within a single family district. The application was denied solely because of the failure to furnish the written consents. The Court held:

> The right of the trustee to devote its land to any legitimate use is *property* within the protection of the constitution . . . . The section [of the ordinance] purports to give the owners . . . within 400 feet of the proposed building authority—uncontrolled by any standard or rule prescribed by legislative action—to prevent the trustee from using its land for the proposed home. The superintendent [of building] is bound by the *decision or inaction* of such owners. There is no provision for review under the ordinance; their failure to give consent is final. They are not bound by any official duty, but are free to withhold consent for selfish reasons or arbitrarily

> and may subject the trustee to their will or caprice. *Yick Wo v. Hopkins,* 188 U.S. 356, 366, 368, 65 S.Ct. 1064, 30 L.Ed. 220. *The delegation of power so attempted is repugnant to the due process clause of the Fourteenth Amendment.* [Citations omitted] [Emphasis supplied] (at pp. 121-122)

The question of delegation of legislative power arose in *Eastlake v. Forest City Enterprises, Inc.,* 426 U.S. 668, 49 L.Ed.2d 132, 96 S.Ct. 2358 (1976) in the context of a city wide voter referendum. The Court distinguished a referendum from the delegation issue addressed in *Eubank* and *Seattle Title Trust Co.*:

> The thread common to both decisions is the delegation of legislative power, originally given by the people to a legislative body, and in turn delegated by the legislature to a *narrow* segment of the community, not to the people at large. (426 U.S. 677)

In upholding the referendum provision of the city charter, the Court observed that the Ohio constitution had preserved to voters of a municipality the power of referendum and could not be considered to be a delegation of power by government.

In *Larkin v. Grendel's Den, Inc.,* 459 U.S. 116, 74 L.Ed.2d 297, 103 S.Ct. 505 (1982), the Court addressed a Massachusetts ordinance prohibiting the issuance of a liquor license within 500 feet of a church or school where the church or school filed a written objection. The statute was challenged as a violation of the Due Process Clause of the Fourteenth Amendment, the Establishment Clause of the First Amendment and the Sherman Act. The Court stated that the statute was more

than simply an exercise of zoning power, since it further delegated the power to determine whether a license should be issued to private individuals. Noting that "[t]his was a power ordinarily vested in agencies of government," the Court stated:

> We need not decide whether, or upon what conditions, such power may ever be delegated to non-governmental entities; here, of two classes of institutions to which the legislature has delegated this important decision making power, one is secular, but one is religious. Under these circumstances, the deference normally due a legislative *zoning* judgment is not merited. [Emphasis supplied] (at p. 122)

The Court held the ordinance invalid under the Establishment Clause, leaving the due process question for future consideration.

The regulation of the sale of beer and the issuance of business licenses is inherently and indisputably a governmental function and an exercise of the state's police power. *Larkin* at p. 122. Likewise, the delegation to private property owners of the power to determine who may engage in the sale of beer by giving or withholding their consents is no less an exercise of governmental power.

In the present case, the property owners in within a 26 acre area are given absolute power under the ordinance to decide whether to approve the issuance of a license. No standards or rules are provided upon which to base their judgments. The city is bound by the action or inaction of the owners who are free to withhold their consents for selfish or arbitrary reasons and subject an applicant to their will. They may deny a license to a business within

600 feet solely on the basis of the applicant's race, sex, religion, national origin, political affiliation or shoe size.

One of the chief vices condemned by this Court in its review of the ordinances in *Eubank* and *Seattle Title Trust* was the lack of uniformity and the inherent potential for abuse. In *Eubank* one side of a street might have a set-back line while the other did not; houses might be staggered back and forth on successive blocks; set-back lines might be set at greatly different distances. Yet, for all that, the *Eubank* ordinance at least had the virtue of being consistent for the group of property owners who compelled the establishment of a set-back line. For whenever the owners of two-thirds of the relevant property decided to impose a set-back, it would have a single line established by a public body and applicable uniformly to themselves and their neighbors. They could not, establish one line for themselves and another for those they did not like or one line for their friends and another for those with whom they might disagree.

The ordinance *sub judice* is far more offensive because it allows property owners to target and block one person's application for a liquor license and at the same time waives it for another in spite of the fact that the two locations are side by side.

The question arises, whether once consent is given, for a license, the same property owners may thereafter prevent the issuance of a license by withholding their consent for an adjacent building within the same area for which the consent was granted. Such uneven treatment would be highly questionable. Yet, that is the very infirmity which exists in the present case.

A. The Ordinance Is Not a Legitimate Exercise of the Police Power.

The Court in *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 71 L.Ed. 303, 47 S.Ct. 114 (1926) held that zoning measures imposing restrictions on the use of property must find their justification in the police power exerted in the interest of the public. The validity of a municipal zoning ordinance must in the first instance be judged by reference to the zoning powers granted under state law. If the state has withheld the zoning power or prescribed standards and rules to be followed, an ordinance adopted in opposition to the state law is unauthorized and not within the police power of the state. If an ordinance is found to be within the state's policy powers, the question then becomes whether the exercise of that power was arbitrary or capricious. In *Village of Belle Terre v. Boraas*, 416 U.S. 1, 39 L.Ed.2d 797, 94 S.Ct. 1536 (1974), the Court held that in dealing with economic and social legislation a legislative enactment will not be invalidated if it is "reasonable, not arbitrary" and "bears a rational relationship to a [*permissive*] state objective." [Emphasis supplied].

In *Eubank* the Court initially noted that the ordinance was passed under the authority of a state statute and had been upheld by the Virginia Supreme Court. The sole issue was whether the ordinance was an unreasonable exercise of the police power.

In *Cusack v. City of Chicago*, 242 U.S. 526, 61 L.Ed. 472, 37 S.Ct. 190 (1917), the Court initially observed that state legislature had declared that the subject of billboard regulation would be subject to municipal regulation and that decision had been sustained by the Supreme Court of Illinois. It further stated:

> It is settled for this court by this decision that the ordinance assailed is within the scope of the power conferred on the city of Chicago by the legislature, that it is to be treated as proceeding from the law-making power of the state, and that, therefore, it is a valid ordinance unless the record shows it to be clearly unreasonable and arbitrary. (242 U.S. 529)

In like fashion, the Court in *Seattle Title Trust, supra,* stated that the ordinance had been upheld by the highest court of the State of Washington as a valid exercise of the police power. Indeed, the Court noted that the trustee had conceded that in its general scope the ordinance was valid. The issue was the reasonableness of the delegation to adjoining property owners of the power to defeat an application for a building permit.

In *Larkin, supra,* the Massachusetts statute had been upheld by the state Supreme Judicial Court. The only issue addressed was whether the statute violated the Establishment Clause.

1. The Delegation of Power to Private Landowners Is Void and Unenforceable.

The city ordinance before the Court in this case cannot be said to enjoy the presumption of validity as those in the foregoing cases. Missouri Courts have consistently held ordinances which make the issuance of a permit or license dependent upon the consent of adjacent property owners void as an unlawful delegation of the state's legislative power to private individuals.

The Missouri Supreme Court in *City of St. Louis v. Russell,* 22 S.W. 470 (1893) declared such a require-

ment to be "clearly void, and without legal force and effect." The ordinance prohibited the issuance of a building permit for a stable to be located on any block within the city "without the written consent of the owners of one-half of the ground of said block." The Court held:

> . . . [T]he ordinance under consideration is void because of the delegation of legislative power by the mayor and municipal assembly of the City of St. Louis to the owners of one-half the ground in the block where the livery stable was builded.
>
> We are *also* of the opinion that the ordinance is invalid, for the reason that by its provisions one citizen is permitted to erect a livery stable in a certain locality, by obtaining the written consents of the owners of one-half the ground in the block, while another of like merit would not be permitted to do so for the want of such consents. It would enable one person to construct and operate a livery stable upon one side of the street, by getting the written consents of the owners of one-half the ground in the block, while another would be denied the privilege of erecting a similar building in the opposite block across the street or in an adjoining block because of his inability to obtain such consent . . . . The effect would be discrimination in favor of certain persons, and against others, entitled to equal rights before the law. This Court has on different occasions held ordinances, less obnoxious, *unreasonable* and *invalid*. [Citations omitted] (at p. 472)

Similar consent provisions have been held not to be within the state's police powers. In *Hays v. City of Poplar Bluff*, 173 S.W. 676 (Mo. 1915), the municipal

ordinance prohibited the construction of any building, the outer walls of which were to be constructed of wood within the area of the city described as the "fire limit". It did, however, allow the city to issue a permit for the construction of a wooden building when "accompanied by the written consent of all persons owning property within the block" in which the proposed building was to be erected. The Supreme Court of Missouri ruled:

> Our conclusion is that the ordinance in question *is void because it is not within the legislative powers delegated to the city by its charter;* because it violates the fundamental principle inherent in our constitutional system that where a municipal corporation seeks by ordinance to restrict for public good the rights of the individual otherwise incident to the ownership of property, it must do so by a rule applicable to all alike under the same circumstances, and cannot make his enjoyment of his own dependent on the arbitrary will or caprice of the municipal legislature; and because its refusal to consider applications for relief from the enforcement of its prohibitory terms, unless accompanied by the written consent of the property owners of the block, *amounts to a delegation of the legislative power of the city to such property owners.* (at p. 680)

In *State ex rel. Daniels v. Kasten,* 382 S.W.2d 714 (Mo. App. 1964), the realtors brought a mandamus action challenging the refusal of the city to issue a permit for the construction of an addition to their slaughterhouse. The ordinance provided that no permit could be issued for the construction of a business building in any "residential district" except upon the submission of

a petition signed by three-fourths of all property owners in the district giving their consent to such permit. Citing *Russell* and *Hays, supra,* the court in granting the writ stated:

> [A]ny other rule could lead to undesirable results. For instance, one person might obtain permission from the required three-fourths because he was more popular in that area, while another might be refused though the business and buildings were identical. Then again another person might succeed in buying enough land in the area to have a controlling voice in the matter. Thus the effect of such a provision is to make the right to build in a particular location dependent wholly on the will and whim of the owners in that vicinity without the application of any sensible fixed guidelines or standards, calculated to protect the interests of all the inhabitants, and result in unequal treatment under the law. (at pp. 717-718)

The problems encountered by the consent provisions in city ordinances are frequently addressed through comprehensive municipal zoning plans. Such plans require public hearings and careful assessment of the character and suitability of areas of a city for particular uses. Exceptions to the zoning ordinances are usually made through a municipal board of adjustment after public consideration of equities of a given case with the full opportunity for any neighbor who may be affected to be heard and his objections given due consideration in the decision making process. The decision of the boards of adjustment are subject to court review. §89.010 *et seq.* R.S.Mo. and especially §89.020-§89.050).

2. The Ordinance Is Unenforceable for Failure to Comply With Missouri Zoning Enabling Act.

Under state law as enunciated by the Supreme Court of Missouri, it is well established that the Zoning Enabling Act, R.S.Mo. §39.010 *et seq.* constitutes the sole source of municipal zoning authority. See: *Huttig v. City of Richmond Heights,* 372 S.W.2d 833 (Mo. 1963); *City of Vinta Park v. Girls Shelter Care, Inc.,* 664 S.W.2d 256, 260 (Mo. App. 1984 and cases cited therein). An attempt by the City to impose a restriction on the use of real property, by its very nature involves the exercise of the zoning authority conferred by Chapter 89, R.S.Mo. and to be effective must fully comply with the statutory requirements and procedures.

The city ordinance here is more than just a liquor licensing law. It conditions the issuance of a liquor license on the use and location of the property within a specified district without first complying with the requirements of Missouri's Zoning Enabling Act, Chapter 89, R.S.Mo. That Act authorizes the establishment of "zoning districts" within cities, towns, and villages. Section 89.020 provides, *inter alia*:

> For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of all cities, towns, and villages is hereby empowered to regulate and restrict . . . the location and use of buildings, structures and land for trade, industry, residence or other purposes.

Section 89.030 further provides in relevant part:

> *Zoning districts*—For any or all of said purposes, the local legislative body may divide the municipality into

> districts of such number, shape, and area as may be deemed best suited to carry out the purposes of Sections 89.010 to 89.140; and within such districts may regulate and restrict the . . . use of buildings, structures, or land.

Zoning regulations are required by Section 89.040 to be made in accordance with a comprehensive plan to promote health, and the general welfare and other stated purposes. The statute provides:

> Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses . . . .

The municipality must establish a zoning commission and board of adjustment. Section 89.050 provides, *inter alia,* as follows:

> The legislative body of such municipality shall provide for the manner in which such districts shall be determined, established, and enforced and from time to time amended, supplemented or changed. *However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.* [Emphasis supplied]

The foregoing discussion amply attests to the fact that the consent requirement of the ordinance is not within the scope of the police power granted to municipalities. That conclusion is confirmed by the fact that in adopting an ordinance restricting the business use of real property without attempting to comply with Missouri's Zoning Enabling Act, the City has thwarted the legislative command

of the State of Missouri. The Missouri Supreme Court has repeatedly invalidated the attempted delegation of legislative power and held those municipal ordinances unreasonable as a matter of legislative policy where they permit inconsistent, arbitrary and capricious results.

The City is not without recourse to plan and regulate within "reasonable limits" the character and suitability of areas of the city through zoning. Indeed, zoning is a salutary alternative to the standardless consent requirement and its unbridled and inherent potential for abuse. Indeed, these very evils were eloquently exposed by former Justice Louis Brandeis in testimony against a similar law:

> You cannot with yard stick decide whether the location of the saloon would be an injury. It may or may not be . . . . But if you give power to every person within twenty five feet of every proposed liquor store to determine that question for himself, you put into his hands a great power which he is likely to abuse. It needs no evidence . . . to prove that such power will often be abused. To give a neighboring real estate owner an uncontrollable right to object may under circumstances, be giving him the whip hand over the applicant for a license; and it will depend entirely upon the character of him who holds that whip, whether this instrument of castigation be used for the owner's protection or be applied in securing unjust booty . . . [W]hen you give the absolute right to object, you have put into the hands of men an irresistible weapon.
>
> [Argument of Louis D. Brandeis before the Joint Committee on Liquor Law of the Massachusetts Legislature, Feb. 27, 1891, reprinted in *1 Hearings on the*

Nomination of Louis D. Brandeis before a Subcommittee of the Senate Committee on the Judiciary 1057, 1065 (1916).]

B. Waiving Consent for One License Applicant While Requiring It of Another in an Adjacent Building Is Repugnant to the Due Process Clause.

The Equal Protection Clause of the Fourteenth Amendment commands that no state shall "deny to any person within its jurisdiction the equal protection of the laws." It requires that all persons similarly situated should be treated alike before the law. The general rule for determining the validity of a legislative classification is whether the differing treatment is "rationally related to a legitimate state interest." As discussed above, Section 13(A) of the ordinance does not further a "legitimate" or "permissive" state interest in delegating authority or failing to comply with state zoning laws for restricting the use of real property. Indeed, it frustrates established policies of the state of insuring decisions are made in a rational manner and by officials whose decisions are subject to scrutiny and review by the courts.

A second issue is whether the ordinance has been arbitrarily enforced. The city has asserted that it was justified in agreeing to exempt the package liquor store. He must nevertheless submit his application for a license each year but is not required to obtain the consents of the landowners within 600 feet (approximately 26 acre area) of his business. It was said that the package store was "grandfathered in" by the understanding with the city after the ordinance was adopted. In essence the city asserts that the use is a non-conforming one. This

proposition of property law generally allows the owner the right to the continuation of a non-conforming use of property enjoyed before the enactment of a zoning use restriction. It was not urged by the city that the package store had acquired a vested property right to the renewal of a license each year. It asserted that no one can have a vested or inherent right to sell alcoholic beverages since a license is but a revocable permit. *Payton v. Riverside,* 640 S.W.2d 137 (Mo. App. 1982). In this situation the city has determined that sale of intoxicating liquor in an almost identical location is reasonable and consistent with the public convenience and welfare. At the same time it permits virtually the same landowners to exclude another qualified applicant.

CONCLUSION

For these reasons, Petitioner respectfully requests that this petition for writ of certiorari be granted.

Respectfully submitted,

JIM R. BRUCE
(*Counsel of Record*)
P.O. Box 37
Kennett, Missouri 63857
Telephone: (314) 888-9696
Attorney for Petitioner

October, 1988

APPENDIX

(June 13, 1988)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 87-2261EM

Billy Joe Lafferty,
Appellant,

vs.

City of Cooter, et al,
Appellees.

Appeal from the United States District Court for the Eastern District of Missouri.

Appellant's petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

June 13, 1988

Order entered at the Direction of the Court:

/s/ Robert D. St. Vrain
Clerk, U. S. Court of Appeals, Eighth Circuit.

(Filed April 13, 1988)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 87-2261

Billy Joe Lafferty,
Appellant,

v.

City of Cooter; Rick Cooper; Steve Childers and June Keen, in their Official and Individual Capacities,
Appellees.

Appeal from the United States District Court for the Eastern District of Missouri.

Submitted: March 15, 1988
Filed: April 13, 1988

Before BOWMAN, Circuit Judge, WRIGHT, Senior Circuit Judge,* and MAGILL, Circuit Judge.

PER CURIAM.

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*The Honorable Eugene Wright, Senior Circuit Judge for the United States Court of Appeals for the Ninth Circuit, sitting by designation.

Billy Joe Lafferty challenges in his appeal the actions of the appellees in denying an application for a liquor license on the grounds that he had failed to secure the consent of sufficient property owners within six hundred feet as required by a City of Cooter ordinance.

Having carefully considered the issues raised, we conclude that the decision of the district court granting appellees' motion for summary judgment is correct in law and that there were no genuine issues of fact. Accordingly, the judgment of the district court is affirmed. *See* 8th Cir. R. 14.

Appellant's motion for attorney's fees and sanctions is also dismissed.

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

(Filed August 31, 1987)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

No. S 85-183 C

BILLY JOE LAFFERTY,
Plaintiff,

v.

CITY OF COOTER, et al.,
Defendants.

ORDER

In accordance with the Memorandum issued herewith,

IT IS HEREBY ORDERED that the motions of the defendants for summary judgment be and they are sustained, and the motions of the plaintiff for leave to amend and for partial summary judgment and preliminary injunction be and they are denied. The action is dismissed on the merits. The trial setting is therefore vacated. The parties shall bear their own costs of the action.

/s/ David D. Noce
United States Magistrate

Dated this 31st day of August, 1987.

(Filed August 31, 1987)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

No. S 85-183 C

BILLY JOE LAFFERTY,
Plaintiff,

v.

CITY OF COOTER, et al.,
Defendants.

MEMORANDUM

This cause is before the Court on the motion of the defendants to reconsider as one motion their two previous motions for summary judgment, pursuant to Rule 56, Federal Rules of Civil Procedure. Plaintiff has also moved the Court to reconsider his previous motion for partial summary judgment and preliminary injunction. The parties consented to the exercise of jurisdiction over the action by a United States Magistrate under 28 U.S.C. §636 (c).

Plaintiff Billy Joe Lafferty brought the present action pursuant to 42 U.S.C. §1983 for injunctive relief, damages, and an award of attorney's fees under 42 U.S.C. §1988, challenging the denial of a liquor license by the defendants. Plaintiff asserts that the action by the defendants, who

are the City of Cooter, Mayor Rick Cooper, and Aldermen Steve Childers and June Keen, contravened the First and Fourteenth Amendments to the Constitution of the United States. Plaintiff alleges not only that infirmities exist in the city ordinance on which the denial was based, but also that an arbitrary and malicious application of the ordinance occurred.

For the purposes of this motion, the undisputed relevant facts are that plaintiff applied to the City of Cooter for a liquor license to sell beer for consumption on the premises of a pool hall which he intended to open. Plaintiff obtained a license application from defendant Cooper. (Pl. Deposition, April 15, 1986, *at* 78-79.) Defendant Cooper reported to the board of aldermen in a letter dated May 13, 1985 that an investigation of the plaintiff for purposes of the liquor license had been completed and that no reason had been found to refuse the license to plaintiff. (Pl. Complaint Exh. A.) The letter further stated that the plaintiff was required to present a petition containing the signatures of 75% of the owners of real property within a radius of 600 feet of the requested business location approving of the license with his application. The letter cited the city attorney's advice on the application of §13(a) of Ordinance No. 1754.[1] *Id.* Plaintiff

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1. Ordinance No. 1754 (Pl. Complaint Exh. C) sets forth the requirements for the issuance of a liquor license for the City of Cooter. It was modeled on an ordinance of Kennett, Missouri. (Pl. Memorandum in Opposition to Def. Motion for Summary Judgment, filed May 21, 1986, *at* 9 n.5.) Section 13(a) of the Cooter ordinance is as follows: "Further, no license shall be issued for the sale of intoxicating liquor within a residential district unless applicant shall have presented a petition to the City Council (along with all other applicable forms relating to such application) which petition shall include the signatures of at least 75% of owners of real property lo-

(Continued on following page)

returned the application at the May 14, 1985 meeting of the board of aldermen. (Pl. Complaint Exh. B.)

It is agreed by all parties that the City of Cooter has no formal zoning laws and that all of the businesses in Cooter, save one, are on Main Street. (Pl. Deposition Exh. 8.) It is in this area that plaintiff proposed to establish his business. Plaintiff leased a building on Main Street next to a package liquor store owned by his brother, Lewis Lafferty. (Pl. Deposition, *at* 77.) While the proposed location is within the primary business area of Cooter, this area is not exclusively commercial. There are several residences nearby. (Pl. Deposition Exh. 8.) In fact, the parties agree that there is no location in the City of Cooter that is not within 600 feet of a residence. (Def. Cooper's Deposition, April 15, 1986, p. 45.)

On July 9, 1985 the Cooter Board of Aldermen voted to deny plaintiff the pool hall license. The stated reason was plaintiff's noncompliance with the ordinance requirement that 75% of the residential owners consent. Defendants June Keen and Steve Childers voted No. Alderman Bud Ashcroft voted Yes. (Pl. Complaint Exh. E.)

Plaintiff contends that his rights to equal protection under the laws have been violated, because a similarly situated individual has maintained a liquor license without complying with the ordinance. Plaintiff alleges that his procedural due process rights were violated by the

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Footnote continued—

cated within a radius of 600 feet of the proposed location, consenting therein to the establishment of such a place of business and to the granting of a license therefor. The 600 feet of restriction set out herein shall be measured from that portion of the licensee's building nearest to the area of the radius of 600 feet in every direction." (Pl. Complaint Exh. C.)

lack of an impartial decision maker. Plaintiff further alleges that, under a proper reading of the ordinance (assuming it to be valid), his substantive due process right to a liquor license was violated by the defendants' arbitrary and capricious interpretation of the ordinance denying him his right to the license. Lastly plaintiff asserts a pendent state claim that the ordinance is an invalid attempt to regulate uses of real property in violation of Missouri state zoning statutes, Chapter 89, Revised Statutes of Missouri.

Defendants respond that the ordinance is a valid one regulating the sale of intoxicating beverages pursuant to municipal authority granted by the state. Defendants further claim qualified immunity as a defense, citing *Chase v. McMasters,* 573 F.2d 1011, 1019 (8th Cir.), *cert. denied,* 439 U.S. 965 (1978). They argue that their interpretation of the ordinance was a reasonable one because in Cooter commercial businesses and residences are intermingled; they are not in separate city zones. They further claim the non-existence of malice or impermissible motives in their interpretation of the ordinance. Finally, defendants contend that plaintiff's claim for damages fails the "speculation and conjecture" test of attempting to prove lost future income.

Both plaintiff and defendants have previously petitioned the Court for summary judgment, in whole or in part, and have both been denied. Both plaintiff and defendants have argued and agreed that the only issue as to defendants' liability is one of construction of the ordinance, an issue of law rather than fact. (Pl. Motion to Reconsider, July 17, 1987; and Def. Motion for Summary Judgment, March 11, 1987, *at* 4-5.) Defendants

have now filed a motion for reconsideration of their two previous motions for summary judgment. Plaintiff has also filed a motion for reconsideration of his prior motion for partial summary judgment and a preliminary injunction.

This Court may grant summary judgment only if the pleadings, admissions, stipulations, depositions and affidavits demonstrate that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.Pro. 56(c), *Celotex Corporation v. Catrett*, ... U.S. ....., 106 S.Ct. 2548, 2552 (1986); *Board of Education, Island Trees, etc. v. Pico*, 457 U.S. 853, 863 (1982). Summary judgment may properly be granted against a plaintiff if the Court gives the plaintiff the benefit of all reasonable inferences from the evidence yet is convinced that there is no set of facts which would entitle the plaintiff to relief under the applicable law. *See, Bellflower v. Pennise*, 548 F.2d 776, 777-78 (8th Cir. 1977); *see also, Odom v. Tripp*, 575 F. Supp. 1491, 1492-93 (E.D. Mo. 1983).

When a decision turns upon the meaning of words in a statute or regulation, a legal question is presented. *Northern Natural Gas Co. v. O'Malley*, 277 F.2d 128, 137 (8th Cir. 1960). Questions in regard to the construction of ordinances are matters of law. *League to Save Lake Tahoe v. Capital Enterprises*, 685 F.2d 1142, 1144 (9th Cir. 1982). Summary judgment is an appropriate mechanism to dispose of legal questions of statutory and regulatory construction. *Standard Oil Company v. Department of Energy*, 596 F.2d 1029, 1066 (Temporary Emergency Court of Appeals 1978); *Mobil Oil Corporation v. Federal Energy Administration*, 566 F.2d 87, 92 (Temporary Emergency Court of Appeals 1977).

The Court will first consider plaintiff's contention that the ordinance is an invalid attempt to regulate uses of real property in violation of state zoning statutes, specifically, Chapter 89, R.S.Mo. Defendants state that the ordinance merely regulates the sale of intoxicating liquors. This argument is addressed first, because a holding in plaintiff's favor on this issue would avoid the necessity of the Court addressing plaintiff's constitutional claims.

Chapter 89, R.S.Mo., is a permissive, not mandatory, scheme for the regulation of the uses of real property. Zoning is not required by state law of a fourth class municipality such as Cooter; a municipality that has zoning need not provide for more than one use in all circumstances. *McDermott v. Village of Calverton Park,* 454 S.W.2d 577, 581-82 (Mo. en banc 1970). The City of Cooter is thus not required to enact zoning ordinances. Plaintiff claims, however, that the ordinance is an invalid attempt to enact zoning without following the requirements of Chapter 89, R.S.Mo. The Court disagrees.

Plaintiff invokes the general rule of construction that a legislative body means to state what it expressly provides in a legislative enactment. Using the doctrine of *expressio unius est exclusio alterius,* plaintiff argues that because the ordinance refers to "residential districts" within the city, it limits the application of §13(a) to such districts rather than allowing application of §13(a) to the city at large. Plaintiff argues that this is persuasive evidence that the ordinance was intended to recognize other districts, *i.e.*, commercial, where the requisite signatures would not be required.

The language of §13(a) of Ordinance No. 1754 was modeled after an ordinance adopted by Kennett, Missouri.

In construing a statute adopted from another source, it is generally held that the interpretation placed upon the statute by the originating body (Kennett) follows to the adopting body (Cooter). *See, John Deere Company v. Jeff DeWitt Auction Company, Inc.*, 690 S.W.2d 511, 514 (Mo. App. 1985). It is also true, however, that the paramount goal of statutory construction is to ascertain the intent of the law makers from the language used, to give effect to that intent if possible, and in so doing to consider the words used in their plain and ordinary meaning. *Metro Auto Auction v. Director of Revenue,* 707 S.W.2d 397, 401 (Mo. en banc 1986). In ascertaining the true intent of a legislative body, a reasonable interpretation must be given in light of the legislative objective. *Collins v. Director of Revenue,* 691 S.W.2d 246, 251 (Mo. en banc 1985).

The principle of *expressio unius* (expression of one thing excludes others not expressed) should be invoked only when aids to interpretation suggest that the statutory language at issue was meant to be exclusive. *Bailey v. Federal Intermediate Credit Bank of St. Louis,* 788 F.2d 498, 500 (8th Cir.), *cert. denied,* ..... U.S. ....., 107 S.Ct. 317 (1986). The record does not indicate that the Cooter ordinance language was meant to be exclusive. The clear objective of the ordinance was the regulation of the sale of intoxicating liquors within the City of Cooter which does not have "use" zoning. A non-exclusive reading of the ordinance serves the purposes for which it was enacted and allows the exercise of the authority necessary to express the police power contained therein. *Id.*

While the City of Cooter may have adopted the ordinance language used by the City of Kennett, which has a zoning law with differentiated use districts, it does not

follow that Cooter adopted Kennett's interpretation where such an interpretation would lead to unjust, absurd, or unreasonable consequences. *See, State ex rel. Lack v. Melton,* 692 S.W.2d 302, 304 (Mo. en banc 1985); *State ex rel. Lebeau v. Kelly,* 697 S.W.2d 312, 315 (Mo. App. 1985). To hold that the City of Cooter intended to adopt differentiated use districts (a zoning plan) by the adoption of a liquor control ordinance would be an unreasonable result. There is no legislative history offered indicating such an intention by the City of Cooter.

Cooter Ordinance No. 1754 is clearly a valid ordinance pertaining to restrictions on licenses issued for the sale of intoxicating liquors. It is not a zoning ordinance designed to generally regulate the uses of real property.

State ex rel. Payton v. City of Riverside, 640 S.W.2d 137, 140 (Mo. App. 1982) [hereinafter *Payton*], provides a concise discussion of a municipal corporation's authority to regulate intoxicating liquors. The law in Missouri clearly holds that there is no inherent right to engage in the liquor business and that "the state may impose conditions, burdens and regulations as is deemed wise and proper." *Id., citing May Department Stores, Inc. v. Supervisor of Liquor Control,* 530 S.W.2d 460, 468 (Mo. App. 1975). Municipalities derive their authority in this area from the state and may exercise, in any reasonable and proper manner, the power granted. *Payton, supra, at* 140.[2]

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2. Also, the ordinance in question is not void for uncertainty. An ordinance will not be declared void for uncertainty, if it is susceptible of any reasonable construction. *Payton, supra, at* 140. So long as the ordinance appears to be within the scope of the delegated power, courts are not to substitute their judgment for the legislative body which enacted the ordinance especially where the purely legislative acts of a municipality are involved. *Id.*

Having found the ordinance to be a valid one regulating intoxicating liquors, this Court must next determine whether the interpretation of the ordinance by the defendants was a reasonable one. Because no "residential district" exists by law within the City of Cooter, the phrase "within a residential district" must have a meaning other than the meaning it technically denotes. Each portion of the statute must be given meaning unless it conflicts with the ascertained legislative intent. *State of Missouri v. Sweeney*, 701 S.W.2d 420, 423 (Mo. en banc 1985). The interpretation of an ordinance by the body in charge of its enactment and application is entitled to great weight. *Coots v. J. A. Tobin Construction Co.*, 634 S.W.2d 249, 252 (Mo. App. 1982) (interpreting a zoning ordinance). Clearly the ordinance was reasonably interpreted as denoting the entire City of Cooter as one "residential district."

Plaintiff asserts that his brother's nearby package liquor business has not been required to obtain the approval of nearby landowners for the reissuance of its liquor license since the enactment of Ordinance No. 1754. (Affidavit of Lewis Lafferty filed July 22, 1987.) This dissimilar treatment, plaintiff contends, is evidence of an arbitrary and capricious interpretation of the ordinance in plaintiff's case as well as a violation of equal protection of the laws. The Court does not agree. The defendants reasonably interpreted §13(a) of Ordinance No. 1754 to not apply to then existing businesses. Cooter chose to "grandfather in" Lewis Lafferty's already established retail liquor business. (Affidavit of Rick Cooper, filed July 28, 1987.) Furthermore, Section 11(a) of Ordinance No. 1754 provides a mechanism to monitor the conduct of already licensed liquor businesses within the

community. Section 13(a) compliments §11(a) by providing a mechanism for evaluating proposed liquor businesses.

When an individual contends that a municipal body has unconstitutionally applied an ordinance in his particular case, courts are not entitled to review the evidence and reverse merely because a contrary result might have been reached. *Burns v. City of Des Peres,* 534 F.2d 103, 108 (8th Cir.), *cert. denied,* 429 U.S. 861 (1976). The function of the court is to "ascertain whether there has been a transgression upon the [individual's] constitutional rights." *Id.* Plaintiff must "prove that the defendants' actions were clearly arbitrary, unreasonable and discriminatory and bore no substantial relation to the health, safety, convenience and welfare of the community," in order to support his constitutional claims. *Burns, supra, at* 108.

The interpretation of the ordinance given by the defendants, even when all the undisputed evidence is viewed most favorably to plaintiff, does not rise to the level of arbitrary, capricious, unreasonable or discriminatory action. Defendants' interpretation of the ordinance is a reasonable one, especially given the concerns of public health, safety, and order present in the regulation of intoxicating liquors. *See, Payton, supra, at* 140.

Having found defendants' interpretation a reasonable one, it must next be seen whether the denial was undertaken with malice or impermissible motives causing a deprivation of constitutional rights to plaintiff. Plaintiff's deposition testimony concedes that no malice by defendants was present. (Pl. Deposition, especially 82 and 86.) Plaintiff also admits that defendants allowed him further opportunity to gain the needed signatures. (*Id., at* 83-84.)

As to establishing impermissible motives on the part of defendants, plaintiff fails here as well. General opposition to the establishment of a pool hall is not an impermissible motive by a decision maker. Cognizable conflict of interest by local legislators arises out of financial or pecuniary interests, not matters of policy. *See*, 2 C. Sands & M. Libonati, *Local Government Law*, §11.10 (1981).

As plaintiff acknowledges in his deposition, defendants allowed him a further opportunity to obtain signatures and reduced the number of required signatures by not counting landowners who did not wish to become involved in the issue. (Pl. Depo., 82-83.) Plaintiff fails to make any showing that defendants Cooper and Keen's prior opposition to his proposed business in any way affected their decision regarding his application.

Finally, plaintiff argues that he has been denied equal protection of the law in that defendant's treatment of an already licensed business was different than that given to his proposed enterprise. As plaintiff neither belongs to a protected class nor asserts a fundamental right, the actions of defendants are evaluated under the "minimal scrutiny" or rational basis test. The classification of proposed and existing businesses is valid, if there is any conceivable basis upon which the classification might relate to any legitimate governmental interest. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970); *United States Dept. of Agriculture v. Moreno*, 413 U.S. 528, 533 (1972). This test is used for all classifications which relate to matters of economics or social welfare. *Hodel v. Indiana*, 452 U.S. 314, 331 (1981); *Dandridge, supra, at* 485-86; *Moreno, supra, at* 533. In attacking the classification, plaintiff has the burden of demonstrating to the Court that the classi-

fication does not have a rational relationship to a legitimate governmental interest but that it is clearly arbitrary and irrational. *Hodel, supra, at* 331-32. In light of the foregoing discussion, plaintiff clearly has failed to meet his burden.

The Court finds and concludes that Cooter Ordinance No. 1754 is a valid regulation of the sale of intoxicating liquor pursuant to delegated state authority and that the defendants' interpretation of the ordinance was reasonable. Plaintiff has suffered no constitutional violation. Defendants' motion for summary judgment will be granted. Plaintiff's motion for summary judgment and for injunctive relief will be denied.

Defendants' assertion that plaintiff fails the "speculation and conjecture" test of proving lost future income and defendants' invocation of immunity need not be addressed in light of the above discussion.

Plaintiff has recently moved this Court to allow amendment of his complaint, pursuant to Fed.R.Civ.Pro. 15, to increase the compensatory and punitive damages sought from defendants Cooper, Keen and Childers, and to add a prayer for compensatory damages from the City of Cooter. Although leave to amend is to be given freely, in the present cause it is denied as moot.

An appropriate Order is issued herewith.

/s/ David D. Noce
United States Magistrate

Dated this 31st day of August, 1987.

CHAPTER 89
ZONING AND PLANNING

89.010. Applicability of Law.—The provisions of sections 89.010 to 89.140 shall apply to all cities, towns and villages in this state.

89.020. Powers of municipal legislative body—group homes, classification, standards, restrictions—enforcement of zoning beyond lake shorelines, when, how.—1. For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of all cities, towns, and villages is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the preservation of features of historical significance, and the location and use of buildings, structures and land for trade, industry, residence or other purposes.

* * *

89.030. Zoning districts.—For any or all of said purposes the local legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of sections 89.010 to 89.140; and within such districts may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

89.040. Purpose of regulations.—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to preserve features of historical significance; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the values of buildings and encouraging the most appropriate use of land throughout such municipality.

89.050. Powers and limitations of legislative body in city—hearings, notice.—The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

89.060. Change in regulations, restrictions and boundaries—procedure.—Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change duly signed and

acknowledged by the owners of ten percent or more, either of the areas of the land (exclusive of streets and alleys) included in such proposed change or within an area determined by lines drawn parallel to and one hundred and eighty-five feet distant from the boundaries of the district proposed to be changed, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of section 89.050 relative to public hearing and official notice shall apply equally to all changes or amendments.

89.070. Zoning commission—appointment—duties.—In order to avail itself of the powers conferred by sections 89.010 to 89.140, such legislative body shall appoint a commission, to be known as "The Zoning Commission", to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report and such legislative body shall not hold its public hearings or take action until it has received the final report of such commission. Where a city plan commission already exists, it may be appointed as the zoning commission.

89.080. Board of adjustment—appointment—term—vacancies—organization.—Such local legislative body shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections 89.010 to 89.140 may provide that the said board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained.

89.090. Board of adjustment—powers.—1. The board of adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these sections or of any ordinance adopted pursuant thereto;

* * *

(3) In passing upon appeals, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, to vary or modify the application of any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

2. In exercising the above mentioned powers such board may, in conformity with the provisions of sections 89.010 to 89.140, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

* * *

89.110. Board of adjustment—decisions subject to review—procedure.—Any person or persons jointly or severally aggrieved by any decision of the board of adjustment, or any officer, department, board or bureau of the municipality, may present to the circuit court of the

county or city in which the property affected is located a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board. Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment. . . .

CITY OF COOTER
COOTER, MO 63839

May 13, 1985

All Aldermen
City Clerk
Mr. Butch Lafferty
Mr. Billy Joe Lafferty

This letter is in regard to the beer license application by Mr. Billy Joe Lafferty.

After an investigation of Mr. Billy Joe Lafferty we find no reason to refuse a license to him. However the city attorney advise that the location for which the license was applied was within 600′ of a residential area. Section 13 (A) does not prohibit the issuance of a license within 600′ of a residential area, but rather it says NO license will issure unless the applicant produces the signatures of 75% of the owners (not renters) within a radius of 600′ of the requested business location. Therefore, before the license can issue, those signatures must be presented.

When the required signatures are obtained, we will meet in a special meeting so as not to delay this matter.

Rick Cooper
Mayor